

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

**DAVID LUMPKINS,**

**Plaintiff,**

**v.**

**Case No: 5:23-cv-229-JSM-PRL**

**ANNETT HOLDINGS, INC.,**

**Defendant.**

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**ORDER**

On June 9, 2023, Defendant moved to compel Plaintiff to provide complete Rule 26(a)(1)(A) initial disclosures. (Doc. 23); Fed. R. Civ. P. 26(a)(1)(A). Defendant's motion represents that Plaintiff timely provided his Rule 26 disclosures, but they did not provide any computations or documents supporting any damages. (Doc. 23 at ¶ 8). Defendant's counsel conferred with Plaintiff's counsel to resolve this discovery dispute, but those efforts were unsuccessful. *Id.* at ¶ 12. Plaintiff failed to file a response to the motion to compel within the time permitted, and on June 29, 2023, the Court ordered Plaintiff to show cause why Defendant's motion to compel should not be granted. (Doc. 24).

In response to the Order to Show Cause, on July 7, Plaintiff filed his response to the motion to compel, representing that amended initial disclosures were provided June 14, 2023. (Doc. 25 at 3). Further, the response represents that the motion is moot, as counsel for both parties has "agree[d] that no further court intervention will be required." *Id.* at ¶ 4. Although Defendant's motion is now moot, Plaintiff concedes that it only served its responses to the discovery requests after Defendant's motion was filed. Thus, Rule 37(a)(5)(A) of the Federal Rules of Civil Procedure applies in the circumstances presented here.

Accordingly, upon due consideration, it is Ordered that:

- (1) Defendant's motion to compel discovery (Doc. 23) is **DENIED** as moot.
- (2) Because Plaintiff has conceded that he served his amended discovery responses only after the motion was filed, and Plaintiff has not demonstrated that the failure to timely respond to the discovery requests was substantially justified or demonstrated that other circumstances would make an award of expenses unjust under Rule 37(a)(5)(A), Defendant's request for additional relief as the Court deems just and proper is **GRANTED**, and it is awarded reasonable expenses, including attorney's fees (Doc. 23) incurred in making the motion.
- (3) Within 14 days of the entry date of this Order, Defendant is directed to file an affidavit supporting its motion for reasonable expenses, including attorney's fees, incurred in making the motion. Plaintiff shall then have 7 days from the date that Defendant's affidavit is filed to file any objections to the expenses and fees sought. Alternatively, if the parties are able to reach an agreement regarding reasonable expenses, including attorney's fees, they should so advise the Court by written notice within the time frame stated above.

**DONE** and **ORDERED** in Ocala, Florida on July 11, 2023.

  
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PHILIP R. LAMMENS  
United States Magistrate Judge

Copies furnished to:

Counsel of Record  
Unrepresented Parties